

1  
2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8

9 ALFONSO GUTIERREZ, ) No. C 10-0863 JSW (PR)  
10 Petitioner, ) **ORDER TO SHOW CAUSE**  
11 vs. )  
12 R. GROUNDS, Warden, )  
13 Respondent. )  
14 \_\_\_\_\_ )

15 **INTRODUCTION**  
16

17 Petitioner, a prisoner of the State of California, currently incarcerated at the  
18 California Training Facility in San Quentin, California, has filed a habeas corpus petition  
19 pursuant to 28 U.S.C. § 2254 challenging the decision of the Board of Parole Hearings  
20 (“Board”) to deny him parole in 2009. Petitioner has paid the filing fee. This order  
21 directs Respondent to show cause why the petition should not be granted.

22 **BACKGROUND**  
23

24 According to the petition, in 1986, Petitioner was convicted of second-degree  
25 murder and was sentenced to 17 years-to-life in state prison. In this habeas action,  
26 Petitioner does not challenge his conviction, but instead challenges the decision of the  
Board to deny him parole. He alleges that he has exhausted state judicial remedies as to  
all of the claims raised in his federal petition.  
27  
28

## DISCUSSION

## I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

## II Legal Claims

Petitioner makes the following claims in his petition: (1) the denial of parole violated his right to due process because it was not supported by any evidence that he would present a danger to society if released; and (2) the Board's decision not to hold another parole hearing for three more years violated his rights under the Eighth Amendment and the Ex Post Facto Clause. Liberally construed, the allegations are sufficient to warrant a response from Respondent.

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If Petitioner wishes to respond to

1 the answer, he shall do so by filing a traverse with the Court and serving it on Respondent  
2 within **thirty (30)** days of his receipt of the answer.

3       3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
4 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
5 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court  
6 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**  
7 days of receipt of the motion, and Respondent shall file with the Court and serve on  
8 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

9       4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
10 the Court informed of any change of address by filing a separate paper captioned "Notice  
11 of Change of Address." He must comply with the Court's orders in a timely fashion.  
12 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
13 to Federal Rule of Civil Procedure 41(b).

14           IT IS SO ORDERED.

15           DATED: November 12, 2010

  
\_\_\_\_\_  
JEFFREY S. WHITE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ALFONSO GUTIERREZ,

Case Number: CV10-00863 JSW

Plaintiff,

## **CERTIFICATE OF SERVICE**

V.

R GROUNDS et al,

**Defendant.**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 12, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alfonso Gutierrez  
D-27610  
CTF  
P.O. 689  
Soledad, CA 93960

Dated: November 12, 2010

Jennifer Ottolini

Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk